

Haiti

AMITY, COMMERCE, AND NAVIGATION; EXTRADITION

Treaty signed at Port-au-Prince November 3, 1864

Ratified by Haiti November 14, 1864

Senate advice and consent to ratification January 17, 1865

Ratified by the President of the United States May 18, 1865

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Entered into force May 22, 1865

Proclaimed by the President of the United States July 6, 1865

*Terminated May 7, 1905*¹

13 Stat. 711; Treaty Series 164

The United States of America and the Republic of Hayti, desiring to make lasting and firm the friendship and good understanding which happily prevail between both nations, and to place their commercial relations upon the most liberal basis, have resolved to fix, in a manner clear, distinct, and positive, the rules which shall, in future, be religiously observed between the one and the other, by means of a treaty of amity, commerce, and navigation, and for the extradition of fugitive criminals.

For this purpose they have appointed as their plenipotentiaries, to wit: the President of the United States, Benjamin F. Whidden, commissioner and consul general of the United States to the Republic of Hayti; and the President of Hayti, Boyer Bazelais, chef d'escadron, his aide-de-camp and secretary, who, after a reciprocal communication of their respective full powers, found in due and proper form, have agreed to the following articles:

ARTICLE I

There shall be a perfect, firm, and inviolable peace and sincere friendship between the United States of America and the Republic of Hayti, in all the extent of their possessions and territories, and between their people and citizens, respectively, without distinction of persons or places.

¹ Pursuant to notice of termination given by Haiti May 7, 1904.

ARTICLE II

The United States of America and the Republic of Hayti, desiring to live in peace and harmony with all the other nations of the earth, by means of a policy frank and equally friendly with all, agree that any favor, exemption, privilege, or immunity whatever, in matters of commerce or navigation, which either of them has granted, or may hereafter grant, to the citizens or subjects of any other government, nation, or state, shall extend, in identity of cases and circumstances, to the citizens of the other contracting party; gratuitously, if the concession in favor of that other government, nation, or state, shall have been gratuitous; or in return for an equivalent compensation, if the concession shall have been conditional.

ARTICLE III

If by any fatality (which cannot be expected, and which God forbid) the two nations should become involved in war, one with the other, the term of six months after the declaration thereof shall be allowed to the merchants and other citizens and inhabitants respectively, on each side, during which time they shall be at liberty to withdraw themselves, with their effects and movables, which they shall have the right to carry away, send away, or sell, as they please, without the least obstruction; nor shall their effects, much less their persons, be seized during such term of six months; which immunity is not in any way to be construed to prevent the execution of any existing civil or commercial engagements; on the contrary, passports shall be valid for a term necessary for their return, and shall be given to them for their vessels and their effects which they may wish to carry with them or send away, and such passports shall be a safe conduct against the insults and captures which privateers may attempt against their persons and effects.

ARTICLE IV

Neither the money, debts, shares in the public funds or in banks, or any other property, of either party, shall ever, in the event of war or national difference, be sequestered or confiscated.

ARTICLE V

The citizens of each of the high contracting parties, residing or established in the territory of the other, shall be exempt from all compulsory military duty by sea or by land, and from all forced loans or military exactions or requisitions, nor shall they be compelled to pay any contributions whatever higher or other than those that are or may be paid by native citizens.

ARTICLE VI

The citizens of each of the contracting parties shall be permitted to enter, sojourn, settle, and reside in all parts of the territories of the other, engage

in business, hire and occupy warehouses, provided they submit to the laws, as well general as special, relative to the rights of travelling, residing, or trading. While they conform to the laws and regulations in force, they shall be at liberty to manage themselves their own business, subject to the jurisdiction of either party respectively, as well in respect to the consignment and sale of their goods as with respect to the loading, unloading, and sending off their vessels. They may also employ such agents or brokers as they may deem proper; it being distinctly understood that they are subject also to the same laws.

The citizens of the contracting parties shall have free access to the tribunals of justice, in all cases to which they may be a party, on the same terms which are granted by the laws and usage of the country to native citizens, furnishing security in the cases required; for which purpose they may employ in the defence of their interests and rights such advocates, solicitors, attorneys, and other agents as they may think proper, agreeably to the laws and usage of the country.

ARTICLE VII

There shall be no examination or inspection of the books, papers, or accounts of the citizens of either country residing within the jurisdiction of the other without the legal order of a competent tribunal or judge.

ARTICLE VIII

The citizens of each of the high contracting parties, residing within the territory of the other, shall enjoy full liberty of conscience. They shall not be disturbed or molested on account of their religious opinions or worship, provided they respect the laws and established customs of the country. And the bodies of the citizens of the one who may die in the territory of the other shall be interred in the public cemeteries, or in other decent places of burial, which shall be protected from all violation or insult by the local authorities.

ARTICLE IX

The citizens of each of the high contracting parties, within the jurisdiction of the other, shall have power to dispose of their personal property by sale, donation, testament, or otherwise; and their personal representatives, being citizens of the other contracting party, shall succeed to their personal property, whether by testament or *ab intestato*. They may take possession thereof, either by themselves or by others acting for them, at their pleasure, and dispose of the same, paying such duty only as the citizens of the country wherein the said personal property is situated shall be subject to pay in like cases. In the absence of a personal representative, the same care shall be taken of the property as by law would be taken of the property of a native in a similar case, while the lawful owner may take measures for securing it.

If a question as to the rightful ownership of the property should arise among claimants, the same shall be determined by the judicial tribunals of the country in which it is situated.

ARTICLE X

The high contracting parties hereby agree that whatever kind of produce, manufactures, or merchandise of any foreign country can be, from time to time, lawfully imported into the United States in their own vessels, may also be imported in the vessels of the Republic of Hayti, and no higher or other duties upon the tonnage or cargo of the vessels shall be levied or collected, than shall be levied or collected of the vessels of the most favored nation.

And reciprocally whatever kind of produce, manufactures, or merchandise of any foreign country can be, from time to time, lawfully imported into Hayti in her own vessels, may be also imported in the vessels of the United States, and no higher or other duties upon the tonnage or cargo of the vessels shall be levied or collected of the vessels of the most favored nation.

ARTICLE XI

It is also hereby agreed that whatever may be lawfully exported or re-exported from the one country in its own vessels, to any foreign country, may in like manner be exported or re-exported in vessels of the other, and the same duties, bounties, and drawbacks shall be collected and allowed as are collected of and allowed to the most favored nation.

It is also understood that the foregoing principles shall apply, whether the vessels shall have cleared directly from the ports of the nation to which they appertain, or from the ports of any other nation.

ARTICLE XII

The provisions of this treaty are not to be understood as applying to the coasting trade of the contracting parties, which is respectively reserved by each exclusively, to be regulated by its own laws.

ARTICLE XIII

No higher or other duties shall be imposed on the importation into the United States of any article the growth, produce, or manufacture of Hayti or her fisheries; and no higher or other duties shall be imposed on the importation into Hayti of any article the growth, produce, or manufacture of the United States or their fisheries, than are or shall be payable on the like articles the growth, produce, or manufacture of any other foreign country or its fisheries.

No other or higher duties or charges shall be imposed in the United States on the exportation of any article to Hayti, nor in Hayti, on the exportation of any article to the United States, than such as are or shall be payable on the exportation of the like article to any foreign country.

No prohibition shall be imposed on the importation of any article the growth, produce, or manufacture of the United States or their fisheries, or of Hayti and her fisheries, from or to the ports of the United States or Hayti, which shall not equally extend to any other foreign country.

ARTICLE XIV

It is hereby agreed that if either of the high contracting parties should hereafter impose discriminating duties upon the products of any other nation, the other party shall be at liberty to determine the origin of its own products intended to enter the country by which the discriminating duties are imposed.

ARTICLE XV

Whenever the citizens of either of the contracting parties shall be forced to seek refuge or asylum in the rivers, ports, or dominions of the other with their vessels, whether merchant or war, through stress of weather, pursuit of pirates or enemies, or want of provisions or water, they shall be received and treated with humanity, giving to them all favor and protection for repairing their vessels, and placing themselves in a condition to continue their voyage without obstacle or hindrance of any kind.

And the provisions of this article shall apply to privateers or private vessels-of-war, as well as public, until the two high contracting parties may relinquish that mode of warfare, in consideration of the general relinquishment of the right of capture of private property upon the high seas.

ARTICLE XVI

When any vessel of either party shall be wrecked, stranded, or otherwise damaged on the coasts or within the jurisdiction of the other, their respective citizens shall receive, as well for themselves as for their vessels and effects, the same assistance which would be due to the inhabitants of the country where the accident happened; and they shall be liable to pay the same charges and dues of salvage as the said inhabitants would be liable to pay in like cases.

If the repairs which a stranded vessel may require shall render it necessary that the whole or any part of her cargo should be unloaded, no duties of custom, charges, or fees on such cargo as may be carried away shall be paid, except such as are payable in like cases by national vessels.

ARTICLE XVII

It shall be lawful for the citizens of either republic to sail with their ships and merchandise (contraband goods excepted) with all manner of liberty and security, no distinction being made who are the proprietors of the merchandise laden thereon, from any port to the places of those who now are, or hereafter shall be, at enmity with either of the contracting parties.

It shall likewise be lawful for the citizens aforesaid to sail with their ships and merchandises before mentioned, and to trade with the same liberty and security, not only from ports and places of those who are enemies of both or either party, to ports of the other, and to neutral places, but also from one place belonging to an enemy to another place belonging to an enemy, whether they be under the jurisdiction of one or several powers, unless such ports or places are blockaded, besieged, or invested.

ARTICLE XVIII

And whereas it frequently happens that vessels sail for a port or place belonging to an enemy without knowing that the same is either besieged, blockaded, or invested, it is hereby agreed by the high contracting parties that every vessel so circumstanced may be turned away from such port or place, but she shall not be detained, nor any part of her cargo, if not contraband, be confiscated, unless, after notice of such blockade or investment, she shall again attempt to enter; but she shall be permitted to go to any other port or place she shall think proper, provided the same be not blockaded, besieged, or invested. Nor shall any vessel of either of the parties that may have entered into such port or place before the same was actually besieged, blockaded, or invested by the other, be restrained from quitting such place with her cargo, nor, if found therein after the reduction and surrender of such place, shall such vessel or her cargo be liable to confiscation, but they shall be restored to the owners thereof.

ARTICLE XIX

The two high contracting parties recognize as permanent and immutable the following principles, to wit:

1. That free ships make free goods; that is to say: that the effects or goods belonging to subjects or citizens of a power or state at war are free from capture or confiscation when found on board neutral vessels, with the exception of articles contraband of war.
2. That the property of neutrals on board of an enemy's vessel is not subject to confiscation, unless the same be contraband of war.

The like neutrality shall be extended to persons who are on board a neutral ship, with this effect, that although they may be enemies of both or either party, they are not to be taken out of that ship, unless they are officers or soldiers, and in the actual service of the enemy. The contracting parties engage to apply these principles to the commerce and navigation of all such powers and states as shall consent to adopt them as permanent and immutable.

ARTICLE XX

The liberty of navigation and commerce shall extend to all kinds of merchandise, excepting those only which are distinguished by the name of contraband of war, and under this name shall be comprehended—

1. Cannons, mortars, howitzers, swivels, blunderbusses, muskets, fusees, rifles, carbines, pistols, pikes, swords, sabres, lances, spears, halberts, grenades, bombs, powder, matches, balls, and everything belonging to the use of arms.

2. Bucklers, helmets, breastplates, coats-of-mail, accoutrements, and clothes made up in military form and for military use.

3. Cavalry belts and horses, with their harness.

4. And, generally, all offensive or defensive arms, made of iron, steel, brass, copper, or of any other material prepared and formed to make war by land or at sea.

ARTICLE XXI

All other merchandises and things not comprehended in the articles of contraband explicitly enumerated and classified as above shall be held and considered as free, and subject of free and lawful commerce, so that they be carried and transported in the freest manner by the citizens of both the contracting parties, even to places belonging to an enemy, excepting only those places which are at the time besieged or blockaded.

ARTICLE XXII

In time of war the merchant ships belonging to the citizens of either of the contracting parties which shall be bound to a port of the enemy of one of the parties, and concerning whose voyage and the articles of their cargo there may be just grounds of suspicion, shall be obliged to exhibit not only their passports but likewise their certificates, showing that their goods are not of the quality of those specified as contraband in this treaty.

ARTICLE XXIII

To avoid all kind of vexation and abuse in the examination of the papers relating to the ownership of the vessels belonging to the citizens of the contracting parties, it is hereby agreed that when one party shall be engaged in war, and the other party shall be neutral, the vessels of the neutral party shall be furnished with passports, that it may appear thereby that they really belong to citizens of the neutral party. These passports shall be valid for any number of voyages, but shall be renewed every year.

If the vessels are laden, in addition to the passports above named, they shall be provided with certificates, in due form, made out by the officers of the place whence they sailed, so that it may be known whether they carry any contraband goods. And if it shall not appear from the said certificates that there are contraband goods on board, the vessels shall be permitted to proceed on their voyage. If it shall appear from the certificates that there are contraband goods on board any such vessel, and the commander of the same shall offer to deliver them up, that offer shall be accepted, and a receipt for the

same shall be given, and the vessel shall be at liberty to pursue her voyage, unless the quantity of contraband goods be greater than can be conveniently received on board the ship-of-war or privateer, in which case, as in all other cases of just detention, the vessel shall be carried to the nearest safe and convenient port for the delivery of the same.

In case any vessel shall not be furnished with such passport or certificates as are above required for the same, such case may be examined by a proper judge or tribunal; and if it shall appear from other documents or proofs, admissible by the usage of nations, that the vessel belongs to citizens or subjects of the neutral party, it shall not be confiscated, but shall be released with her cargo, (contraband goods excepted,) and be permitted to proceed on her voyage.

ARTICLE XXIV

In order to prevent all kinds of disorder in the visiting and examination of the vessels and cargoes of both the contracting parties on the high seas, it is hereby agreed that, whenever a ship-of-war shall meet with a neutral of the other contracting party, the first shall remain at a convenient distance, and may send its boats, with two or three men only, in order to execute the examination of the papers concerning the ownership and cargo of the vessel, without causing the least extortion, violence, or ill-treatment, for which the commanders of the said armed ships shall be responsible with their persons and property; for which purpose the commanders of all private armed vessels shall, before receiving their commissions, give sufficient security to answer for all damages they may commit; and it is hereby agreed and understood that the neutral party shall in no case be required to go on board the examining vessel for the purpose of exhibiting his papers, or for any other purpose whatever.

ARTICLE XXV

It is expressly agreed by the high contracting parties that the stipulations before mentioned, relative to the conduct to be observed on the sea by the cruisers of the belligerent party toward the ships of the neutral party, shall be applicable only to ships sailing without a convoy; and when the said ships shall be convoyed, it being the intention of the parties to observe all the regards due to the protection of the flag displayed by public ships, it shall not be lawful to visit them; but the verbal declaration of the commander of the convoy that the ships he convoys belong to the nation whose flag he carries, and that they have no contraband goods on board, shall be considered by the respective cruisers as fully sufficient; the two parties reciprocally engaging not to admit, under the protection of their convoys, ships which shall have on board contraband goods destined to an enemy.

ARTICLE XXVI

Whenever vessels shall be captured or detained, to be carried into port under pretense of carrying to the enemy contraband goods, the captor shall give a receipt for such of the papers of the vessel as he shall retain, which receipt shall be annexed to a copy of said papers; and it shall be unlawful to break up or open the hatches, chests, trunks, casks, bales, or vessels found on board, or remove the smallest part of the goods, unless the lading be brought on shore in presence of the competent officers, and an inventory be made by them of the same. Nor shall it be lawful to sell, exchange, or alienate the said articles of contraband in any manner, unless there shall have been lawful process, and the competent judge or judges shall have pronounced against such goods sentence of confiscation.

ARTICLE XXVII

That proper care may be taken of the vessel and cargo, and embezzlement prevented in time of war, it is hereby agreed that it shall not be lawful to remove the master, commander, or supercargo of any captured vessel from on board thereof, during the time the vessel may be at sea after her capture, or pending the proceedings against her, or her cargo, or anything relating thereto; and in all cases where a vessel of the citizens of either party shall be captured or seized and held for adjudication, her officers, passengers, and crew shall be hospitably treated. They shall not be imprisoned or deprived of any part of their wearing apparel, nor of the possession and use of their money, not exceeding for the captain, supercargo, mate, and passengers, five hundred dollars each, and for the sailors one hundred dollars each.

ARTICLE XXVIII

It is further agreed that in all cases the established courts for prize causes, in the country to which the prizes may be conducted, shall alone take cognizance of them. And whenever such tribunal of either of the parties shall pronounce judgment against any vessel, or goods, or property claimed by the citizens of the other party, the sentence or decree shall mention the reasons or motives on which the same shall have been founded, and an authenticated copy of the sentence or decree, and all of the proceedings in the case, shall, if demanded, be delivered to the commander or agent of the said vessel without any delay, he paying the legal fees for the same.

ARTICLE XXIX

When the ships-of-war of the two contracting parties, or those belonging to their citizens which are armed in war, shall be admitted to enter with their prizes the ports of either of the two parties, the said public or private ships, as well as their prizes, shall not be obliged to pay any duty either to the officers

of the place, the judges, or any others; nor shall such prizes, when they come to and enter the ports of either party, be arrested or seized, nor shall the officers of the place make examination concerning the lawfulness of such prizes, but they may hoist sail at any time and depart and carry their prizes to the places expressed in their commissions, which the commanders of such ships shall be obliged to show. It is understood, however, that the privileges conferred by this article shall not extend beyond those allowed by law or by treaty with the most favored nation.

ARTICLE XXX

It shall not be lawful for any foreign privateers who have commissions from any prince or state in enmity with either nation to fit their ships in the ports of either, to sell their prizes, or in any manner to exchange them; neither shall they be allowed to purchase provisions, except such as shall be necessary to their going to the next port of that prince or state from which they have received their commissions.

ARTICLE XXXI

No citizen of Hayti shall apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the said United States, or any of them, or against the citizens, people, or inhabitants of the said United States, or any of them, or against the property of any of the inhabitants of any of them, from any prince or state with which the said United States, shall be at war; nor shall any citizen of the said United States, or any of them, apply for or take any commission or letters of marque for arming any ship or ships to act as privateers against the citizens or inhabitants of Hayti, or any of them, or the property of any of them, from any prince or state with which the Said Republic shall be at war; and if any person of either nation shall take such commission or letters of marque, he shall be punished according to their respective laws.

ARTICLE XXXII

The high contracting parties, desiring to avoid all inequality in their public communications and official intercourse, agree to grant to their envoys, ministers, and other diplomatic agents, the same favors, privileges, immunities, and exemptions which the most favored nations do or shall enjoy; it being understood that whatever favors, privileges, immunities, or exemptions, the United States of America or the Republic of Hayti may find it proper to give to the envoys, ministers, and other diplomatic agents, of any other power, shall by the same act be extended to those of each of the contracting parties.

ARTICLE XXXIII

To protect more effectually the commerce and navigation of their respective citizens, the United States of America and the Republic of Hayti agree to admit and receive, mutually, consuls and vice-consuls in all their ports open to foreign commerce, who shall enjoy, within their respective consular districts, all the rights, prerogatives, and immunities of the consuls and vice-consuls of the most favored nation.

ARTICLE XXXIV

In order that the consuls and vice-consuls of the two contracting parties may enjoy the rights, prerogatives, and immunities which belong to them by their public character, they shall, before exercising their official functions, exhibit to the government to which they are accredited their commissions or patents in due form; and, having obtained their *exequatur*, they shall be acknowledged, in their official character, by the authorities, magistrates, and inhabitants, in the consular district in which they reside.

ARTICLE XXXV

It is also agreed, that the consuls, their secretaries, officers, and persons attached to the service of consuls, they not being citizens of the country in which the consul resides, shall be exempt from all kinds of imposts, taxes, and contributions, except those which they shall be obliged to pay on account of their commerce or property, to which the citizens or inhabitants, native or foreign, of the country in which they reside, are subject; being, in everything besides, subject to the laws of the respective States. The archives and papers of the consulates shall be respected inviolably; and under no pretext whatever shall any person, magistrate, or other public authority seize, or in any way interfere with them.

ARTICLE XXXVI

The said consuls and vice-consuls shall have power to require the assistance of the authorities of the country for the arrest, detention, and custody of deserters from the ships-of-war and merchant vessels of their country. For this purpose they shall apply to the competent tribunals, judges, and officers, and shall, in writing, demand such deserters, proving by the exhibition of the registers of the vessels, the muster-rolls of the crews, or by any other official documents, that such individuals formed a part of the crews; and on this claim being substantiated, the surrender shall not be refused. Such deserters, when arrested, shall be placed at the disposal of the consuls and vice-consuls, and may be confined in the public prisons at the request and cost of those who shall claim them, in order to be sent to the vessels to which they belong, or to others of the same country. But if not sent back within

three months, to be counted from the day of their arrest, they shall be set at liberty, and shall not again be arrested for the same cause.

ARTICLE XXXVII

For the purpose of more effectually protecting their commerce and navigation, the two contracting parties do hereby agree, as soon hereafter as circumstances will permit, to form a consular convention, which shall declare specially the powers and immunities of the consuls and vice-consuls of the respective parties.

ARTICLE XXXVIII

It is agreed that the high contracting parties shall, on requisitions made in their name, through the medium of their respective diplomatic agents, deliver up to justice persons who, being charged with the crimes enumerated in the following article, committed within the jurisdiction of the requiring party, shall seek an asylum or shall be found within the territories of the other: *Provided*, That this shall be done only when the fact of the commission of the crime shall be so established as to justify their apprehension and commitment for trial, if the crime had been committed in the country where the persons so accused shall be found; in all of which the tribunals of said country shall proceed and decide according to their own laws.

ARTICLE XXXIX

Persons shall be delivered up, according to the provisions of this treaty, who shall be charged with any of the following crimes, to wit: murder, (including assassination, parricide, infanticide, and poisoning,) attempt to commit murder, piracy, rape, forgery, the counterfeiting of money, the utterance of forged paper, arson, robbery, and embezzlement by public officers, or by persons hired or salaried, to the detriment of their employers, when these crimes are subject to infamous punishment.

ARTICLE XL

The surrender shall be made, on the part of each country, only by the authority of the executive thereof. The expenses of the detention and delivery, effected in virtue of the preceding articles, shall be at the cost of the party making the demand.

ARTICLE XLI

The provisions of the foregoing articles relating to the extradition of fugitive criminals shall not apply to offences committed before the date hereof, nor to those of a political character. Neither of the contracting parties shall be bound to deliver up its own citizens under the provisions of this treaty.

ARTICLE XLII

The present treaty shall remain in force for the term of eight years, dating from the exchange of ratifications; and if one year before the expiration of that period neither of the contracting parties shall have given notice to the other of its intention to terminate the same, it shall continue in force, from year to year, until one year after an official notification to terminate the same, as aforesaid.

ARTICLE XLIII

The present treaty shall be submitted on both sides to the approval and ratification of the respective competent authorities of each of the contracting parties, and the ratifications shall be exchanged at Washington within six months from the date hereof, or sooner if possible.

In faith whereof the respective plenipotentiaries have signed the foregoing articles, in the English and French languages, and they have hereunto affixed their seals.

Done, in duplicate, at the city of Port-au-Prince this third day of November, in the year of our Lord one thousand eight hundred and sixty-four.

B. F. WHIDDEN [SEAL]
BOYER BAZELAIS [SEAL]